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# CONSTITUTIONAL DEVELOPMENTS IN INDIA

by

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*with the aid of the Research Staff of the Foreign Policy Association*

THE proposals for Indian constitutional reform embodied in the White Paper submitted to Parliament on March 17, 1933 offer a concrete summary of the results so far achieved in the successive round-table conferences at London.<sup>1</sup> On March 29 the House of Commons voted overwhelmingly in favor of setting up a joint Parliamentary committee to consider these proposals, in consultation with Indian representatives.<sup>2</sup> The report of the joint committee, offering its suggestions and amendments to the government's proposals, is not expected to be presented until late in 1933. Following this report, the British government will lay before Parliament a bill embodying its final plans for the new Indian constitution.

When the Indian bill is finally introduced, the action will climax six years of painstaking investigation, frank exchange of views in a series of conferences, widespread political agitation, and severe—if not brutal—repression. The present era of constitutional readjustment in India was ushered in by the appointment of the Indian Statutory Commission, headed by Sir John Simon, on November 26, 1927.<sup>3</sup> Lord Birkenhead was at that time Secretary of State for India in a Conservative government. His stubborn refusal to include Indian members on the commission, despite advance protests and warnings, handicapped its activities from the start. The fact that the Liberal and Labour parties acquiesced in this procedure came as a further shock to politically minded Indians. A large section of the Indian public, including even the moderate political leaders, refused to cooperate with the commission.<sup>4</sup>

The Indian National Congress, meeting in Calcutta at the end of December 1928, adopted a resolution calling for revival of the non-cooperation movement unless dominion status should have been granted India on or before December 31, 1929.

In June 1929 the Labour party assumed the reins of British government and set about finding means to avert the *impasse* that threatened to develop in India. On October 31 Lord Irwin, the British Viceroy, announced that he was authorized to state that "the natural issue of India's constitutional progress," as contemplated in the Declaration of 1917,<sup>5</sup> was "the attainment of Dominion status."<sup>6</sup> In this statement Lord Irwin also made it known that the British government had decided to summon a round-table conference to secure the agreement of Indian leaders upon the measures of constitutional reform that should be submitted to Parliament. When pressed by the Indian Nationalist leaders to declare that the purpose of the round-table conference would be to frame a dominion constitution for India, however, Lord Irwin indicated that he could not prejudge the action of Parliament. On December 31, 1929, therefore, the Indian National Congress voted in favor of complete independence, and authorized Gandhi to conduct a non-violent campaign of civil disobedience to that end. The campaign was inaugurated in March 1930 with the march to the sea, culminating at Dandi in the defiance of the government's salt monopoly. Within a few months, Mahatma Gandhi and thousands of his followers had been jailed.

Meanwhile, the Simon report had been published in June 1930. Its importance, however, was rapidly overshadowed by the approach of the round-table conference, scheduled to meet in October. In the sum-

1. *Proposals for Indian Constitutional Reform*, Cmd. 4268 (London, H. M. Stationery Office, 1933).

2. The test vote came on the Labour party's amendment calling for the release of Indian political prisoners. The amendment was defeated by a vote of 475 to 42, and the motion was then carried by 449 votes to 43. The Indian representatives are appointees of the Governor-General. They cannot vote on the committee decisions, and it is not probable that their influence will succeed in liberalizing the provisions of the White Paper. On the contrary, it is likely that the political strength of the Churchill Tories will force a stiffening of the safeguards already proposed.

3. The appointment of such a commission, for the periodic review of the working of the reformed constitution, had been recommended by the Montagu-Chelmsford reform proposals of 1918, and had been embodied in Section 84-A of the Government of India Act, 1919. *Report on Indian Constitutional Reform*, Cd. 9109 (London, H. M. Stationery Office, 1918), par. 261.

4. C. F. Andrews, *India and the Simon Report* (New York, Macmillan, 1930), p. 38.

5. The Declaration of 1917 stated British policy to be "that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." The qualification was added, however, that the British government must remain the judge "of the time and measure of each advance . . ." *Report on Indian Constitutional Reforms*, Cd. 9109, cited, par. 6.

6. For text of Lord Irwin's statement, cf. *India in 1929-30* (Calcutta, Government of India Central Publication Branch, 1931), Appendix II, p. 466-468.

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mer of 1930, two of the outstanding Indian moderates sought to mediate between Lord Irwin and Mahatma Gandhi in a last effort to induce the Congress party to participate in the conference. The Congress Nationalists presented three basic demands for inclusion in any constitution to be framed by the conference: (1) that a fully national government should be established, responsible only to the people of India, and with the right to secede at will from the British Empire; (2) that this government be given control of the Indian Army and control of Indian economic policy; (3) that such British claims and concessions as seemed unjust, including the Indian public debt, be referred to a neutral tribunal.

Lord Irwin had no authority to accept such demands. The round-table conference convened at London on November 12, 1930, with the active leaders and members of the Congress party still in jail. Despite this fact, the conference registered certain substantial achievements.<sup>7</sup> Federation of the Indian States and the provinces of British India was agreed to, bringing closer the goal of a united India. A wide measure of autonomy for the provincial governments of British India was decided upon. In the central government, responsibility was accepted "in principle." Actually, however, this grant of responsible authority was hedged about with safeguards in the form of powers retained by the Governor-General over the Army, foreign affairs and economic matters, which still left substantial control in British hands.

Nevertheless, the gains were so significant that the Indian moderates, upon their return to India, were able to induce Gandhi to consider the new possibilities thus opened up. Lord Irwin, exhibiting a courageous indifference to the pettier aspects of Imperial prestige, met Gandhi in a series of face-to-face talks that eventuated in a truce signed on March 4, 1931. Three weeks later, the Indian National Congress overwhelmingly ratified Gandhi's return to a policy of cooperation with Britain and gave him plenary powers to represent the Congress at a second round-table conference. The Congress objectives remained the same: independence,

full self-government, impartial examination of Britain's financial transactions in India. A leeway for negotiation was afforded, however, by interpreting independence as "partnership at will" in the Empire, and by allowing for safeguards "demonstrably necessary in the interests of India."

Before the new conference met on September 7, the Labour government had been replaced by a National Cabinet. Thereafter a general election was held, and Conservative influence in the new Parliament and government was greatly strengthened. Under such circumstances, it proved impossible to secure the limitation of the safeguards desired by the Congress leaders. Gandhi returned to India early in 1932 to find a renewed struggle under way between his followers and the British authorities. Unable to induce the new Viceroy, Lord Willingdon, to confer with him in order to iron out the difficulties, Gandhi prepared to initiate a renewed campaign of non-violent civil disobedience. He was at once arrested and the civil disobedience movement was outlawed. The emergency ordinances which were invoked to make this ban effective—involving house-to-house searches, arrests without warrant, temporary detention without trial, abolition of trial by jury, seizures of property and buildings, collective fines on inhabitants of "turbulent" areas, forfeiture of funds of individuals and associations declared unlawful by the Governor-General, prohibition of picketing and boycotting, and restrictions on the freedom of assembly and the press—amounted to the wholesale suspension of civil liberties,<sup>8</sup> but proved effective in curbing the activities of the Congress movement.

Meanwhile, a third round-table conference, greatly restricted in number and scope, had met in London at the close of 1932. Its sessions were held *in camera*, and the subjects considered were merely points of detail not affecting the structure of the constitutional scheme already elaborated. The work of all three of the round-table conferences—with certain illiberal alterations—was brought together in the White Paper now being examined by the joint committee of Parliament.

### THE FEDERATION

In three important respects, the proposals set forth in the White Paper are notably different from the Montagu-Chelmsford Reforms of 1918. For the first time since the British conquest an attempt is made to bring into being a united India, by joining the Indian States and the British-Indian provinces in a federal government. Secondly, the prin-

ciple of responsibility in the federal government is formally admitted, although the full realization of Indian control in this sphere is limited by a number of safeguards. Finally, the present system of divided responsibility in the provinces is abolished in favor of complete responsibility, although the Governors will retain also emergency powers.

7. *Indian Round Table Conference*, Cmd. 3778 (London, H. M. Stationery Office, 1931).

8. Measures taken to counteract the *Civil Disobedience Movement* . . . , Cmd. 4014 (London, H. M. Stationery Office, 1932), p. 60-95.

The broadest change advanced by the new constitutional proposals calls for the establishment of a federation of the Indian States and the provinces of British India.<sup>9</sup> In giving effect to this proposal, problems of a unique character are created by the extreme differences between the proposed federal units. An outstanding contrast exists in their differing governmental systems. In British India, elective legislatures exert considerable effect on governmental policy.<sup>10</sup> The Indian States, on the contrary, are still autocratically governed by their hereditary rulers, assisted in a few cases by consultative assemblies.<sup>11</sup> Thus, while the representatives of British India in the federal Legislature will be elected, the White Paper proposes that the representatives of the States should be directly appointed by the various Indian rulers.

Similar difficulties arise over the widely differing constitutional relationships of the States and provinces with the Crown. British India is at present a unitary state, the administrative control of which is centered in an agent of Parliament—the Secretary of State for India. Through simple Act of Parliament, therefore, the provinces can be transformed into autonomous federal units, endowed with a defined measure of legislative and executive authority exclusive of that conferred upon the federal government. Parliament, however, cannot legislate thus directly for the Indian States, which are merely under the suzerainty of the Crown. The position of the Crown in relation to the

States is defined by a large number of separate treaties and agreements and by a cumulative growth of custom and usage summed up in the term "paramountcy." In order to meet this situation, the White Paper proposes that separate agreements defining the powers that the Princes are prepared to surrender to federal authority, to be termed Instruments of Accession, should be concluded between the Crown and the various States. The scope of the powers thereby surrendered by the States, however, will be much smaller than that of those transferred to the federal government by the provinces of British India. Furthermore, the White Paper proposes that the Crown shall still retain the powers vested in it over the States, except those which the latter agree to transfer to the federation. These residuary Crown powers, including those expressed in the term "paramountcy," will "be exercised by the Crown's representative [i.e., the Governor-General] in his capacity of Viceroy," and "will be outside the scope of the Federal Constitution."<sup>12</sup>

The broad outlines of the proposed federation have been drawn to meet the conditions thus presented. A federal Legislature will be set up to consist of elected representatives from British India and of representatives from the Indian States appointed by their rulers. The federal executive will consist of the Governor-General representing the Crown, aided and advised by a Council of Ministers who will be responsible—subject to a number of qualifications—to the Legislature.

### THE FEDERAL LEGISLATURE

The proposed federal Legislature will be bi-cameral, consisting of the House of Assembly and the Council of State.<sup>13</sup> The Assembly will have a maximum of 375 members, of whom 125 will be appointed by the Princes and 250 will be directly elected from the provinces of British India.<sup>14</sup> No final allocation of the seats reserved to the Princes can be made until it is known what States will join the federation. On the provincial side of the Assembly, the seats will be allocated to the several communities and interests of British India as follows: General (i.e., chiefly Hindu, including 19 seats reserved to the depressed classes),<sup>15</sup> 105; Muslim, 82; Commerce and Industry (Special), 11; Labor (Special), 10; Women (Special), 9; European (i.e. British), 8; Indian Christian, 8; Landholders (Special), 7; Sikh, 6; Anglo-Indian, 4.<sup>16</sup> The franchise for these seats will be approximately the same as that

for the existing provincial legislatures, under which 10.4 per cent of the adult male population and 0.6 per cent of the adult female population are enfranchised.<sup>17</sup> This franchise, which is based essentially on property qualifications, will be supplemented under the new proposals by an educational qualification common to both men and women, thus enabling some increase in the number of electors without materially altering the ratio be-

12. This provision is severely condemned in British India on the ground that it affords Britain the opportunity of exerting an undue leverage on the States-members of the federation. It is argued that this power may be used on the one hand to bolster up the autocratic governments of the States, and on the other to induce the States' representatives to curb the democratic and nationalistic fervor of the British-Indian side of the proposed federal Legislature.

13. *Proposals for Indian Constitutional Reform*, cited, p. 10-12.

14. All references to British India in this report exclude Burma, which is not included in the proposals of the White Paper. *Ibid.*, p. 23, footnote.

15. The holders of these seats will be elected from general electorates composed chiefly of Hindus but also of Parsees, Jains, Buddhists and others. Nearly all the remaining seats will be held by representatives elected by members of their own individual community voting in separate electorates.

16. *Ibid.*, Appendix II, p. 89-90.

17. *Report of the Indian Statutory Commission*, cited, Vol. I, p. 191.

9. *Proposals for Indian Constitutional Reform*, cited, p. 6-8.

10. T. A. Bisson, "An Autonomous India: The Administrative Issues," *Foreign Policy Reports*, September 30, 1931, p. 278-288.

11. *Report of the Indian Statutory Commission*, Cmd. 3568 (London, H. M. Stationery Office, 1930), Vol. I, p. 83-91.



tween male and female voters.<sup>18</sup> The general effect of these proposals will be to enfranchise between 2 and 3 per cent of the total population of British India, comprising some seven or eight million voters.

The Council of State will have a maximum of 260 members, of whom 100 will be appointed by the Princes and 10 by the Governor-General. The remaining 150 seats are allotted to British India, with the proviso that one-third must be reserved to the Muslims. Of these British-Indian seats, 136 will be filled indirectly through election by the various provincial legislatures. An additional 10 seats will be reserved for certain lesser minorities—7 for Britishers, 2 for Indian Christians, and 1 for Anglo-Indians.<sup>19</sup> One seat each will be reserved for Coorg, Ajmer, Delhi and Baluchistan.

### INDIAN OBJECTIONS

These provisions for the federal Legislature have met with widespread criticism in India, both from moderates and radicals. Five major objections are presented:

1. *The anomaly of a federation of democratic and autocratic elements.* Indian opinion claims that the States' representatives should be elected, at least to the Assembly.<sup>20</sup> This provision could be enforced by making it a condition to be accepted by the Princes in their Instruments of Accession. It would counteract the injustice of refusing to admit delegates from the organizations of the States' people to the round-table conferences, and of ignoring the views expressed in the statements adopted by these organizations.<sup>21</sup>

2. *The extremely limited degree of enfranchisement in British India.* A substantial majority of British-Indian opinion favors full adult suffrage, and maintains that the difficulties alleged to stand in the way could be overcome, as they have been in the case of the recent electoral reforms in Ceylon.<sup>22</sup>

3. *The separate electorates for the minority communities and special interests on the British-*

*Indian side of the Assembly.* The White Paper provides special electorates for the Sikh, Muslim, Indian Christian, Anglo-Indian, and British communities, as well as for the interests represented by commerce and industry, the landholders, and labor.<sup>23</sup> Only the representatives of women<sup>24</sup> and the depressed classes,<sup>25</sup> if the caste Hindus be excepted, will not be returned from separate electorates. Provision is made, however, that the separate electorates may be abolished, with the assent of the communities affected, at the end of ten years. Progressive opinion in British India deplores the perpetuation of communal voting, which has been condemned by all observers of its effects, including the Simon commission.<sup>26</sup> Forward-looking Indians argue that the British government, instead of dictating the Communal Award, might well have enforced a settlement that would have incorporated a system of general electorates, with reserved seats, in the new constitution. In their opinion, the provision for modification after ten years is not likely to prove effective, since each year of communal voting and representation helps to strengthen its hold on the communities involved. They feel that a drastic abolition of the practice during a period of constitutional reorganization, as at present, offers the best hope of accomplishing the reform.<sup>27</sup>

4. *The representation accorded the Princes, the Muslims, the Britishers, and the various capitalist interests is wholly out of proportion to their relative ratios of the population.*<sup>28</sup> It is pointed out that the White Paper aggravated this situation by lowering the total number of members in the Assembly, thereby reducing the British-Indian seats from 300, as recommended by the Franchise Committee, to 250.<sup>29</sup> Indian opinion favors the larger number, which would not only allow for a more equally proportionate distribution of seats but also reduce the size of the constituencies, thus lessening the administrative difficulty of introducing full adult suffrage.

25. As a result of Mahatma Gandhi's fast in September 1932, the original allocation of the depressed classes to separate electorates by the British government's Communal Award was set aside in favor of the arrangements concluded among the Hindus in the so-called Poona pact. Under this pact, the depressed classes are guaranteed 148 seats in the provincial legislatures—more than twice the number allotted to them by the British award. Election to these seats, and to the 19 seats reserved for the depressed classes in the federal Assembly, will be by joint electorates, subject to the following procedure: For each reserved seat the constituencies of the depressed classes will hold primary elections for the purpose of nominating a panel of four candidates who will stand for election in the general electorate qualified for the reserved seat. *Proposals for Indian Constitutional Reform*, cited, Appendix III, p. 91.

26. *Report of the Indian Statutory Commission*, cited, Vol. II, p. 56.

27. The need for action from the outside is upheld by G. T. Garratt, who states that the British must act alone for "an immediate abolition of the system." *An Indian Commentary*, cited, p. 271.

28. The population of the Indian States constitutes 24 per cent of that of British India. If the States were allotted one-fourth of the seats in the Legislature, they would have 65 in the Council of State and 94 in the Assembly instead of the respective 100 and 125 actually given them. The Muslims, constituting slightly over one-fourth of the population of British India, are allotted one-third of the British-Indian seats in both Houses. In the case of the Britishers resident in British India, the disproportion is most glaring. Taking British India as a whole, one seat is allotted in the Council of State to every 1 2/3 million persons and one seat in the Assembly to every 1 million persons. Yet 7 seats in the upper House and 14 seats in the lower House (including 6 of the special commerce and industry seats expected to be secured by Britishers) are allotted to only 168,134 Britishers. Commerce and industry is given 11 seats in the Assembly against 10 for labor, although the Franchise Committee had recommended equality between the two. The landowners have 7 seats in the Assembly but the agricultural laborers, numbering scores of millions, are given no seats. Finally, the depressed classes, which constitute over one-sixth of the population of British India, are allotted only one-thirteenth of the seats in the Assembly and none in the Council of State.

29. *Report of the Indian Franchise Committee, 1932*, cited, p. 167.

18. In making this proposal, the White Paper rejected the recommendation of the Franchise Committee, headed by Lord Lothian, for a material increase in the proportion of female voters by permitting a lower educational qualification for women. *Report of the Indian Franchise Committee, 1932*, Cmd. 4086 (London, H. M. Stationery Office, 1932), p. 169-171.

19. *Proposals for Indian Constitutional Reform*, cited, p. 11, and Appendix I, p. 88.

20. Resolution adopted by the National Liberal Federation of India (most influential organization of the Indian moderates), *The Servant of India* (Poona), April 20, 1933, p. 191; also "Notes," *The Modern Review* (Calcutta), April 1933, p. 475-477.

21. Resolutions adopted by the Executive Committee of the Indian States' Peoples Conference held in Bombay on April 29, 1933. *The Bombay Chronicle*, May 3, 1933.

22. This contention is supported by G. T. Garratt, a British official formerly employed in the Indian civil service, who argues that the administrative difficulties could be overcome by creating a much larger number of smaller and more homogeneous provinces. *An Indian Commentary* (London, Jonathan Cape, 1928), p. 268-271.

23. For details regarding these electoral arrangements, cf. *Proposals for Indian Constitutional Reform*, cited, Appendix II, p. 89.

24. The women of British India, however, condemn the proposals regarding their representation in the federal Legislature on two grounds. First, they contend that the women representatives to the Assembly should be directly elected from general electorates, instead of indirectly elected to reserved seats by members of the provincial legislatures. Secondly, they point out that both men and women should be expressly made eligible for election to the Council of State, as the existing practice does not allow women to be elected to the upper House. Cf. text of statement issued by the Women's Indian Association, *The Indian Social Reformer* (Bombay), May 20, 1933, p. 602.

5. *The conservative elements in the Legislature are weighted unduly as against the nationalist elements.* In this respect the chief sufferers are the Hindus, from whose ranks come the largest number of militant Indian nationalists—in particular, the bulk of the leaders and members of the Congress movement headed by Mahatma Gandhi, himself a Hindu. Although the caste Hindus constitute a clear majority of the population of British India, they are allotted only 86 of the 250 British-Indian seats in the Assembly. An analysis of the proposed composition of the Legislature indicates the practical impossibility of securing a majority for a nationalist measure, much less a radical economic proposal.<sup>30</sup>

### BRITISH REJOINDERS

In answer to these objections, official opinion points out that they ignore many of the practical difficulties involved. If election of the States' representatives to the Legislature were insisted upon, the Princes would probably refuse to enter the federation. Furthermore, the British government was not free

to insist upon recognition of the organizations of the States' people, owing to the internal autonomy guaranteed the Princes by their treaty agreements with the Crown. In the second place, the Indian criticisms with regard to the franchise proposals pass too lightly over the very real administrative difficulties involved. The vast areas and populations of the provinces of British India, especially in view of the prevailing illiteracy, necessitate a gradual approach to the realization of adult suffrage. Finally, British opinion points out that the various communities of British India were themselves unable to agree upon a substitute for separate electorates, although the opportunity to do so was freely offered them. In the single case where such an agreement was reached—with regard to the depressed classes—it was immediately ratified by Britain and incorporated in the constitutional proposals.

### THE FEDERAL EXECUTIVE

The executive authority of the federation will be exercised by the Governor-General aided by a Council of Ministers which, in principle, will be responsible to the federal Legislature.<sup>31</sup> In actual practice, the present irresponsible Government of India will be replaced by a diarchical cabinet system of reserved and transferred departments. Three departments of the federal government—those concerned with defense, foreign affairs, and ecclesiastical affairs—will be controlled exclusively by the Governor-General. In the case of the remaining federal departments, the Governor-General will be guided by the advice of his Ministers except where certain "special responsibilities" with which he is charged call his "discretionary powers" into play.

### THE RESERVED DEPARTMENTS

For the purpose of assisting him in administering the reserved departments, the Governor-General will be empowered to appoint three Counsellors.<sup>32</sup> In order to secure

coordination of policy between the reserved and transferred departments, the White Paper suggests that the Governor-General should keep his Counsellors and his responsible Ministers in close contact by encouraging joint deliberation between them and by ascertaining the views of his Ministers on defense expenditure.<sup>33</sup> Indians argue, however, that these minor qualifications do not meet the basic objection that the wide powers withheld from Indian control by the reserved departments practically nullify responsibility in the federal government. No great importance attaches to the reservation of the Department of Ecclesiastical Affairs, which provides chaplains of the Churches of England and Scotland for the British troops and civil officers in India.<sup>34</sup> By reserving the Department of Foreign Affairs to the exclusive control of the Governor-General, however, the White Paper materially reduces the sphere of control exercised by the Ministers. For many years Indians have criticized the domination exercised by an irresponsible government over Indian foreign policy, fearing that India may be ultimately dragged

30. The Council of State, with 260 members, will be dominated by a solid conservative bloc of 118 votes, consisting of the 100 nominees of the Princes, the 10 nominees of the Governor-General, the 7 Britishers, and the 1 Anglo-Indian. Only 13 additional votes, which will be easily forthcoming from the 48 or more Muslim representatives, are required to convert this conservative bloc into an absolute majority. The Assembly, with 375 members, will be similarly dominated by a solid conservative bloc of 143 votes, consisting of the 125 nominees of the Princes, the 14 Britishers, and the 4 Anglo-Indians. The additional 45 votes required to convert this conservative bloc into an absolute majority will be readily secured from the 97 seats allotted to the Muslims, landholders, and Indian Christians.

This analysis of the probable voting alignment in the Legislature is borne out by Sir Samuel Hoare, Secretary of State for India. In the course of his address to Parliament on March 27, 1933, Sir Samuel declared: "I do not wish to make prophecies about the future, least of all the Indian future. But I would ask hon. members to look very carefully at the proposals which we have made in the White Paper for the constitution of the Federal Legislature and of the Provincial Legislatures, and if they analyze these proposals I think they will agree with me that it will be almost impossible, short of a

landslide, for the extremists to get control of the federal centre. I believe that, to put it at the lowest, it will be extremely difficult for them to get a majority in a Province like Bengal." Cf. "Speech of Sir Samuel Hoare, . . ." *Indian Information Series No. 68* (British Library of Information, New York City), p. 6.

31. *Proposals for Indian Constitutional Reform*, cited, p. 9-10.

32. These officials will not necessarily be Indians, and no provision is made that they should be chosen from the elected members of the Legislature. Their salaries and conditions of service will be prescribed by the Secretary of State for India, and therefore will not be subject to the vote of the Legislature. *Ibid.*, p. 40.

33. *Ibid.*, p. 12-13.

34. Nevertheless, it is particularly galling to Indians that the expenditure required for the salaries, pensions and allowances of these British chaplains should be a non-votable charge upon the federal budget.

into a war against its own best interests. Criticism has also been levelled against the personnel chosen to represent India abroad.<sup>35</sup> The reservation of the Defense Department strikes an even more vital blow at federal responsibility. It not only removes the federation's defense policy from Indian control, but also levies a non-votable charge upon the federal budget in the form of expenditure on the Indian Army, more than a third of which consists of British troops and the higher officers of which are almost exclusively British. The reservation of this expenditure, which in recent years has amounted to some 60 per cent of the total central budget, substantially curtails Indian fiscal responsibility.<sup>36</sup> These proposals are rendered especially unacceptable to Indians, owing to the White Paper's rejection of all interim measures designed to speed up the Indianization of the Army.<sup>37</sup>

### THE TRANSFERRED DEPARTMENTS

The sphere of administration outside the ambit of the reserved departments will be entrusted to a body of Ministers with the constitutional right of tendering advice to the Governor-General.<sup>38</sup> Under normal circumstances, the Ministers will be fully responsible to the Legislature for the conduct of their departments. In certain cases, however, the Governor-General will be entitled to act, in connection with the working of the transferred departments, on his own exclusive responsibility. To give effect to this policy, the Constitution Act will charge the Governor-General with a "special responsibility" for "certain clearly indicated general purposes."

#### Governor-General's "Special Responsibilities"

The list of "special responsibilities" with which the Governor-General will be charged comprises the following:<sup>39</sup>

- (1) The prevention of grave menace to the peace or tranquillity of India or of any part thereof.
- (2) Any matter which affects the administration of the reserved departments.

35. Cf. the specific instances mentioned below, p. 157, footnote 48.

36. T. A. Bisson, "The Military Problem in India," *Foreign Policy Reports*, October 14, 1931.

37. The majority of Indians, facing the practical difficulties created by Britain's negligence in training Indian military officers, are willing to reserve the subject of defense to the Governor-General's control for a definite transitional period. In so doing, however, they make four demands: (1) that the Constitution Act should transfer ultimate authority for the defense of India from Parliament to the Indian federal Legislature; (2) that the Constitution Act should embody a scheme for the progressive Indianization of the Army within a fixed term of years, resulting in the early and complete withdrawal of British troops from India; (3) that the employment of Indian troops outside India for purposes other than those of Indian defense should require the sanction of the federal Legislature; (4) that recruitment to the Army, instead of being confined as at present to the so-called "martial" races, should be thrown open to all communities, classes, and provinces. The White Paper grants none of these minimum demands.

38. *Proposals for Indian Constitutional Reform*, cited, p. 13, 40-41.

39. *Ibid.*, p. 14, 41-42.

(3) The safeguarding of the financial stability and credit of the federation.

(4) The protection of the rights of any Indian State.

(5) The prevention of commercial discrimination.

(6) The safeguarding of the legitimate interests of minorities.

(7) The securing to the members of the Public Services of any rights provided for them by the constitution, and the safeguarding of their legitimate interests.

The White Paper makes clear the precise effect contemplated by imposing these "special responsibilities" upon the Governor-General as follows:

The Governor-General's power of intervention is to be utilized only as a last resort; it is neither intended nor expected that he "will find it necessary to be constantly overruling his Ministers' advice." On the contrary, it is assumed that those responsible for dealing with administrative problems will approach them "in the spirit of partners in a common enterprise. In the great bulk of cases, therefore, in day-to-day administration, where questions might arise affecting the Governor-General's 'special responsibilities,' mutual consultation should result in agreement, so that no question would arise of bringing the Governor-General's powers, in connection with his 'special responsibilities,' into play."<sup>40</sup>

Indian opinion, however, questions either the necessity or justification of these "special responsibilities," particularly in view of the substantial powers otherwise reserved to the Governor-General. Reservation of defense and foreign affairs in itself measurably weakened federal responsibility; to this is now added the possibility of intervention by the Governor-General over a wide range of the activities transferred to the responsible Ministers. The vague and general character of the first three of the Governor-General's "special responsibilities," in particular, is alleged to invalidate the assertion that the purposes for which they were framed are "clearly indicated." It is claimed, moreover, that the coercive effect of these reserve powers, when employed through consultation "in day-to-day administration," would have the same result as though they were actually brought into play. Even the existence of such broadly drawn powers of intervention is held to constitute an overhanging threat sufficient to embarrass the freedom of action of the Ministers. Finally, it is asserted, these powers will prove a perpetual source of friction that will militate against the smooth working of the reformed constitution.

#### Governor-General's "Discretionary Powers"

In order to enable the Governor-General to discharge his "special responsibilities," he is vested with a series of "discretionary powers" which he may exercise without "any constitutional obligation to seek, or having sought, to be guided by, ministerial advice."

40. *Ibid.*, p. 14-15.



The suggested list of these powers is as follows:<sup>41</sup>

- (1) Dissolve, prorogue, and summon the Legislature.
- (2) Summon forthwith a joint session of the Legislature in cases of emergency.
- (3) Accept or veto bills, or reserve them for the signification of His Majesty's pleasure.
- (4) Make rules of legislative business in so far as these are required for the due exercise of his own powers and responsibilities.
- (5) Grant or withhold previous sanction to the introduction of certain classes of legislative measures.
- (6) Pass "Governor-General's Acts" without the consent of the Legislature.
- (7) Arrest the course of discussion of measures in the Legislature.
- (8) Promulgate emergency ordinances having the effect of law.
- (9) Assume to himself by proclamation all powers vested by law in any federal authority, in the event of a complete breakdown of the constitutional machinery.

The first three of these "discretionary powers" are such as the executive branch of government normally exercises. Nevertheless, the fact that these powers are to be exercised not upon the advice of the Ministers but at the discretion of the Governor-General results in a wide variation from responsible parliamentary procedure. Parliament, for example, is summoned or dissolved by the King on the advice of the Prime Minister. The Indian Legislature, however, will be summoned or dissolved solely at the discretion of the Governor-General.<sup>42</sup> This distinction becomes much more important in the case of the Governor-General's veto power. In Britain, the Prime Minister's difficulty over legislation ends with its passage by Parliament, since the King's consent is taken for granted. The future Indian Prime Minister, however, must face the possibility of the Governor-General's veto of bills enacted by the Legislature, as well as the alternative possibility of having them reserved for the approval of His Majesty in Council. The White Paper, moreover, contains no provision whereby the Legislature can enact a measure over the Governor-General's veto. On the contrary, it provides that legislative measures, even when approved by the Governor-General, will be subject to disallowance by His Majesty in Council within a period of twelve months.

The last four of the Governor-General's "discretionary powers" vest him with an extraordinary legislative authority which enables him at his discretion to usurp the functions of the Legislature.<sup>43</sup> Under the sixth

power, the Governor-General is authorized to present a bill to either House accompanied by a message declaring that his duties in connection with a reserved department or some one of his "special responsibilities" make it essential that the bill so presented shall become law before a specified date. By a similar procedure, the Governor-General is also empowered to direct the enactment of a bill already introduced in either House.<sup>44</sup> As a negative corollary of this law-making prerogative the Governor-General is also authorized, under the seventh of his "discretionary powers," to direct that the Legislature shall not proceed further with a bill which he deems to affect his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of India. The eighth of the Governor-General's "discretionary powers" enables him to promulgate two different kinds of ordinances. In the first case he is empowered at his discretion, whenever he considers that the requirements of a reserved department or of one of his "special responsibilities" render it necessary, to promulgate such ordinances as, in his opinion, the circumstances require. In the second case he is empowered, if his Ministers are satisfied that a sufficient emergency exists at a time when the Legislature is not in session, to promulgate such ordinances for the good government of British India as the circumstances require. Finally, under the ninth of his "discretionary powers," the Governor-General will be authorized, whenever he is satisfied that a situation has arisen which renders it temporarily impossible for the government of the federation to be carried on in accordance with the provisions of the Constitution Act, to assume to himself by proclamation all such powers vested by law in any federal authority as appear necessary for effectively carrying on the government of the federation.

#### FINANCIAL AND ECONOMIC SAFEGUARDS

The actions of the future Indian Finance Minister will be limited by three categories of safeguards: a long list of "non-votable" expenditures, extraordinary powers exercised by the Governor-General over budgetary appropriations, and a number of drastic limitations on the scope of the Finance Minister's authority to develop a national economic policy.

Three general classes of expenditure are removed by statute from the vote of the Legislature: expenditure upon the reserved departments, salaries and pensions of high of-

41. *Ibid.*, p. 17-22. Other items may be added to this category of "discretionary powers," since its precise range "will be impossible exhaustively to foresee until the drafting of the Constitution Act has reached completion."

42. Subject to the statutory requirement that it shall meet at least once each year, and that not more than twelve months shall intervene between the end of one session and the beginning of the next. *Ibid.*, p. 43.

43. *Ibid.*, p. 47-48; 51-52.

44. A bill subject to such a message will be considered or reconsidered by each House, as the case may require. Should it fall of enactment by one or both Houses in the form and by the date specified, the Governor-General will be empowered to enact it as a "Governor-General's Act." The enacting words of such acts, by omitting the phrase "by and with the consent of both Chambers," will make it clear that they are enacted on the Governor-General's own responsibility.



ficials and of superior civil servants, and interest and sinking-fund charges upon the national debt.<sup>45</sup> These non-votable charges on the future federal budget have amounted in recent years to some eighty per cent of the total central expenditure of British India. With so large a proportion of federal expenditure required for defense, civil administration and debt service, relatively small sums will be available for greatly needed educational and public-health programs. Although the Finance Minister will be empowered to frame the budget, he will have but slight opportunity to effect a reduction of the statutory expenditures, since the bulk of these charges will be controlled exclusively by the Governor-General. In any case, so long as a rapid and general Indianization of the Army and civil administration is prohibited, as it is by the White Paper, no extensive reduction of the statutory charges can be effected.<sup>46</sup>

Over the remaining twenty per cent of federal expenditures, the Finance Minister will normally exercise authority in responsibility to the vote of the Legislature. Even this authority, however, is greatly limited by special powers conferred upon the Governor-General in relation to budget procedure which enable him, at his discretion, to restore any amounts reduced or rejected by legislative vote.<sup>47</sup>

In addition to the broad limitations imposed upon the Finance Minister's control of federal expenditure, the White Paper also places large restrictions upon his ability to frame a national economic policy. The reservation of the Department of Foreign Affairs vests the authority to negotiate economic agreements with foreign countries in the hands of a Counsellor chosen by and responsible solely to the Governor-General instead of in the hands of an elected Minister responsible to the Legislature. In negotiations so controlled, Indians fear that the interests of Britain may be served more largely than the interests of India, as in the case of

the arrangements reached at the Ottawa Conference.<sup>48</sup> At the very least, the Finance Minister would be debarred from devising and effectuating economic policies which required the agreement of foreign countries, more especially if such policies ran counter to British interests.

Similarly, the proposals regarding "commercial discrimination," and the "special responsibility" laid upon the Governor-General in this matter, limit the Finance Minister's power to devise and effectuate a domestic economic program in the interests of Indian trade and industry. The occasion for this "special responsibility" arises from the provision in the White Paper which enjoins the Indian federal and provincial legislatures from passing laws subjecting British subjects or companies in India to any disability to which Indians are not subjected in the United Kingdom.<sup>49</sup> Official opinion argues that this provision is required in order to safeguard the vested British interests built up in India over a long course of years, and upon the integrity of which large numbers of British stockholders are dependent. Indian opinion, on the contrary, claims that the provision, while outwardly fair and just, will in reality handicap Indian efforts to regain control of many phases of its national economy now usurped by British monopolies.<sup>50</sup>

In the third place, a series of special provisions regarding the management of currency and exchange operates to withdraw this power from Indian control. One of the prerequisites to the inauguration of the federation is that "a Reserve Bank, free from political influence, will have been set up by Indian legislation, and be already successfully operating."<sup>51</sup> This bank will be entrusted with the management of currency and exchange, in accordance with advanced modern practice. Although substantial agreement exists in India regarding the advisability of setting up a Reserve Bank, Indian opinion is virtually unanimous in its condemnation of the terms upon which the

45. For detailed list of these statutory expenditures, cf. *ibid.*, p. 49-50, and Appendix VII, Part III, p. 122.

46. A large proportion of the non-votable expenditure goes to Britishers—either as officers or soldiers in the Indian Army, officials in the civil administration, or bond-holders in the share of the Indian public debt (nearly one-half) held in London. Indians demand the right—denied to them by the White Paper—of replacing the Britishers in these three categories with Indians, claiming that the economies thereby effected would release large sums for education and public health.

47. *Ibid.*, p. 48-50.

48. The Indian delegation at Ottawa (chosen by the Governor-General) accepted agreements embodying the policy of Imperial preference on certain goods entering India, although Indian opinion has consistently opposed the establishment of such preference until the right to refuse or accept it is subject to responsible control. More recently, in the case of the World Economic Conference, Sir Samuel Hoare, the Secretary of State for India, was chosen to head the Indian delegation. Sir Purshotamdas Thakurdas, one of the foremost Indian authorities on economic affairs, was relegated to the rank of an adviser, and refused to accept the appointment in protest against the unrepresentative character of the Indian delegation.

49. *Ibid.*, p. 70-71.

50. Indians argue that such a provision would be justified only if the relative stages of economic progress in the two countries were approximately similar. The reverse, however, is actually the case. Britain is highly industrialized, while India is only starting on the process of industrialization. Furthermore, large sections of the Indian economy are dominated by British monopolies, while relatively insignificant portions of Britain's economy are in the hands of Indians. A concrete example of this contention is afforded by the Indian coastal traffic, which has long been virtually monopolized by British shipping interests. For many years the Indian representatives in the Central Legislature have sought without success to reserve Indian coastal traffic to Indian shipping—a measure which is employed by a nation as industrially advanced as the United States. Under the White Paper scheme, attempts of this nature would be outlawed by statute, and the Governor-General vested with a "special responsibility" to prevent such efforts at "commercial discrimination." Cf. Resolution of the National Liberal Federation of India, *The Servant of India*, April 20, 1933, p. 191.

51. *Proposals for Indian Constitutional Reform*, cited, p. 17.

White Paper proposes to establish it.<sup>52</sup> Once the bank has been set up, moreover, the federal Legislature will be unable to legislate on the subject of currency and exchange without the Governor-General's consent.<sup>53</sup>

A fourth limitation is placed upon Indian responsibility for economic policy by the provision that the federal government will exercise merely "a general control over railway policy." The "actual control of the administration" of the state and private railways will "be placed by the Constitution Act in the hands of a Statutory Body, so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference."<sup>54</sup> Indian criticism of this proposal again centers on the method by which the proposed railway board is to be constituted rather than on its general advisability. In this case, the board is not even to be set up by Indian legislation but by an Act of Parliament, thus completely removing the details of its constitution and powers from Indian control.<sup>55</sup>

### THE FEDERATION AND ITS UNITS

Under the new constitutional proposals, eleven provinces of British India will become nominally autonomous units, the governments of each being administered by a Governor, aided and advised—with broad qualifications—by a Council of Ministers responsible to the provincial legislature.<sup>56</sup> The exact number of the federating States will not be known until the Princes have deposited their Instruments of Accession.

#### THE PROVINCIAL GOVERNMENTS

In Bengal, Bihar, and the United Provinces the legislatures will be bi-cameral; in other provinces they will consist of a single house. The franchise is essentially based on a property qualification, supplemented by an educational qualification common to men and

Finally, the general fiscal authority of the Finance Minister is limited by the Governor-General's "special responsibility" for the "safeguarding of the financial stability and credit of the Federation." The object of this provision, the White Paper points out, is to confer on the Governor-General the right to step in whenever, in his opinion, the policy pursued by his Ministers might "endanger seriously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation."<sup>56</sup> In order that the Governor-General may have assistance in the discharge of this "special responsibility," he will be empowered, after consultation with his Ministers but at his own discretion, to appoint a Financial Adviser.<sup>57</sup> The White Paper suggests that the services of the Financial Adviser will also be available to the Ministers. Indian opinion, however, arguing from observation of the position of the Financial Adviser in Egypt, believes that the activities of such an official in India would further reduce the authority of the Finance Minister.

women alike. Provisions are made to secure an electorate of approximately ten per cent of the depressed classes in most provinces.<sup>59</sup> Separate electorates are provided for Sikhs, Muslims, Indian Christians, Anglo-Indians, Britishers, landholders, commerce and industry, labor, women, and other special interests. These proposals will enfranchise approximately one-fourth of the total adult population, thus more than doubling the existing provincial electorates.<sup>60</sup>

Indian opinion strongly opposes the establishment of bi-cameral legislatures in Bengal, Bihar and the United Provinces, on the ground that they will constitute a conservative brake on legislative procedure. Criticism is also directed against the limited character of the franchise and the extensive provisions for separate electorates. On both these points, the women of British India claim that they have been singled out for special discrimination.<sup>61</sup> As in the case of the federal

52. In the first place, Indians object to the implication that the Finance Minister in India would be less capable of exercising responsible authority over currency and exchange than the Chancellor of the Exchequer in Britain. Secondly, a Reserve Bank set up by the present Government of India would not, in the belief of Indians, be "free from political influence"; on the contrary, it would be likely to favor the interests of Britain. Thirdly, Indians condemn the proposal that the establishment of the bank be made a condition precedent to the inauguration of the federation, especially under the onerous terms laid down. These terms are (1) that the Indian budgetary position should be assured, (2) that the existing short-term debt both in London and in India should be substantially reduced, (3) that adequate reserves should have been accumulated, and (4) that India's normal export surplus should have been restored. (*Ibid.*, p. 17.) Such severe terms are viewed by Indians either as a club to aid the Government of India in persuading the Indian Legislature to set up a Reserve Bank amenable to the influence of British financial interests, or else as a pretext for postponing the federation indefinitely. Finally, Indians demand that the rupee-sterling link be cut and that the exportation of gold from India be prohibited, pointing out that in the absence of these measures gold has recently flowed out of India to the value of £75,000,000. For expressions of Indian opinion on this subject, cf. *The Servant of India*, February 2, 1933, p. 50; February 16, 1933, p. 75; April 6, 1933, p. 161-164; April 27, 1933, p. 193; also *The Indian Social Reformer*, March 25, 1933, p. 471.

53. *Proposals for Indian Constitutional Reform*, cited, p. 69.

54. *Ibid.*, p. 36.

55. *The Servant of India*, March 30, 1933, p. 156.

56. *Proposals for Indian Constitutional Reform*, cited, p. 16-17.

57. This official will be responsible solely to the Governor-General, and will hold office during the latter's pleasure. His salary will be fixed by the Governor-General and will not be subject to the vote of the Legislature. *Ibid.*, p. 41.

58. *Ibid.*, p. 53-54. These provinces will be Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces, Assam, the North-West Frontier Province, and the two new provinces of Sind and Orissa which are to be created.

59. Representatives of the depressed classes will be elected in accordance with the provisions of the Poona pact. (Cf. p. 153, footnote 25.)

60. *Proposals for Indian Constitutional Reform*, cited, p. 24-25, 57-58, and Appendixes III-V, p. 91-113.

61. The White Paper points out that the ratio of women to men electors in the provinces will be increased to approximately

Legislature, the provincial legislatures are so constituted that it will be practically impossible for the progressive Indian elements to establish a majority control.

Executive authority in the provinces will be entrusted to a Governor appointed by the King.<sup>62</sup> The Governor will be advised by a Council of Ministers responsible to the legislature over the whole field of provincial administration, thus abolishing the present system of diarchy with its reserved and transferred departments. Effective ministerial responsibility in the provinces, however, is limited by a series of "special responsibilities" and "discretionary powers" laid upon the Governor, closely parallel to those held by the Governor-General.<sup>63</sup> Strict financial and economic safeguards, similar to those at the center, are also effective in the provinces. A large proportion of provincial expenditure will not be submitted to the vote of the legislature.<sup>64</sup> Over the remainder, the Governor will exert special powers in the course of budget procedure, enabling him to restore amounts reduced or eliminated by vote of the legislature. Provincial responsibility over finance will therefore be little more complete than at the center. Taking into consideration the enlarged scope of the Governor's special powers and the extensions of communalism in the legislatures, many Indians assert that the proposals embodied in the White Paper offer no measurable advance on the existing system of provincial diarchy.<sup>65</sup>

#### FEDERAL CONTROL OVER THE STATES AND PROVINCES

The scope of federal authority, both as to legislative and administrative competence, is markedly less over the States than over the

provinces.<sup>66</sup> Upon entering the federation, each ruler will prescribe in his Instrument of Accession the subjects on which he will permit the federal government to legislate. It therefore follows that the federal government's legislative authority will not only be unduly circumscribed over the States as a whole but will also differ from State to State. No such anomalous situation exists in the case of the provinces. Here the entire sphere of legislative competence is carefully divided by lists of subjects reserved for exclusively federal and exclusively provincial legislation, supplemented by a list of subjects upon which the federal and provincial governments may legislate concurrently.<sup>67</sup> The range of the federal government's administrative authority, also, is much less over the States than over the provinces. In order to secure the carrying out of any federal purpose in a particular State, the Governor-General will have to conclude an agreement with the State concerned specifying that it will use the agency of its own State authorities to that end. In the case of the provinces, on the other hand, the authority of the federal government will "extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." The net result of these provisions, in the opinion of British Indians at least, is to water down the federation to such an extent that the promised gains become largely illusory.<sup>68</sup>

#### POSITION OF THE SECRETARY OF STATE

The extensive powers retained under the White Paper by the Secretary of State for India, in whose behalf the numerous constitutional safeguards will be exercised by the Governor-General and the Governors, mark the extent to which the proposed Indian federation falls short of the status of a dominion. In particular, the continuance of the Secretary of State's right to recruit Indian civil and police officers completely dashed the hopes raised in India during the round-table conferences that there would be a rapid In-

1 to 7 under the new proposals, as contrasted with approximately 1 to 21 at the present time. (*Ibid.*, p. 28.) This ratio, however, is considerably less favorable to women than the recommendations of the Lothian Franchise Committee, which in most provinces established a ratio of 1 to 4. (*Report of the Indian Franchise Committee, 1932*, cited, p. 38.) The difference results largely from the White Paper's insistence upon an educational qualification requiring a high school diploma from men and women alike, instead of the Franchise Committee's recommendation that literacy should constitute a sufficient educational qualification for women. (*Ibid.*, p. 86.) Furthermore, the extension of the communal list to include women directly refutes the British claim, in this instance at least, that separate electorates are sanctioned owing to Indian pressure. The women witnesses appearing before the Franchise Committee expressed a practically unanimous desire that they should vote in general electorates. (*Ibid.*, p. 227.) This testimony has been strongly reaffirmed in the memorandum, previously referred to, of the Women's Indian Association. (Cf. p. 153, footnote 24.) The memorandum favors full adult suffrage. In the absence of this reform, however, it demands the enfranchisement of all literate women, and of all women 21 years of age and over in urban areas—measures which would equalize the male and female electorates—and calls for the withdrawal of separate electorates for women "as it will introduce the poison of communalism into the now united ranks of the women of India."

62. Appointments to Governorships, practically without exception, are reserved to Britishers.

63. *Proposals for Indian Constitutional Reform*, cited, p. 23-24; 54-56; 60-66.

64. For list of these statutory expenditures, cf. *ibid.*, p. 63.

65. "A Critique of the White Paper," *The Modern Review*, June 1933, p. 685.

66. *Proposals for Indian Constitutional Reform*, cited, p. 67-68; 71-72.

67. For detailed lists, cf. *ibid.*, Appendix VI, p. 113-119.

68. An Indian publicist suggests that, in order to give reality of power to the federal government, the following changes should be introduced into the White Paper scheme: (1) Residual powers should be vested in the federal government so far as the provinces are concerned; (2) exclusively federal subjects and concurrent subjects should be the same for the States as for the provinces; (3) though it should be open to a State either to join the federation or not, it should not be possible for it to join in respect of some federal functions and not the others; (4) transfer of a subject should entail transfer of ultimate legislative control to the federal government; (5) in the field of concurrent powers central legislation should always override provincial; (6) in the administration of federal powers the federal government should affect State and provincial action directly and not through the Governor-General. D. G. Karve, "The Round Table Scheme," *The Servant of India*, February 9, 1933, p. 69.



dianization of the civil administration when the federation was inaugurated.<sup>70</sup> It means that the "steel frame" of an Imperial Civil Service and an Imperial Police Force, the members of which—largely British—are appointed by the Secretary of State, will still be maintained when the new constitution goes into effect. Furthermore, the Governor-General will be vested with a "special responsibility" to see that the extraordinary rights and privileges enjoyed by these civil officials will be properly safeguarded.

### CONCLUSION

Moderate British opinion maintains that the White Paper's grant of federal and provincial responsibility, even though qualified by safeguards, constitutes a marked advance on the existing constitutional status of India. It is claimed that these proposals give India the framework of dominion status, subject to temporary controls required to guide the new government through a transitional period. This point of view is elaborated in a recent editorial in *The Economist*:

"After all, the exercise of powers held in reserve will be called for only if India's elected Ministers fail to rise to the measure of the responsibility accorded them; and though the safeguards may look formidable on paper, the event may prove, if all goes well, that they can gradually be allowed to lapse into disuse . . . In many even of the matters in which the Governor-General has in the last resort an autocratic responsibility the elected Ministers will be entitled to tender advice. Given good will on both sides the new Constitution, we are convinced, can be made to work; and India has everything to lose by obstructing its inauguration or endeavouring to wreck its functioning."<sup>72</sup>

Indian opinion, however, contends that this argument assumes too readily that the proposals make possible an easy or automatic advance toward fully responsible government. Defects in the very structure of the federation, Indians claim, destroy the validity of an analogy with the constitutional evolution of the dominions. On this ground, Indians present four general objections to the White Paper scheme:

1. *The undue prominence of safeguards.* It is significant, in the eyes of Indians, that the White Paper nowhere mentions the term "dominion status," and that since the advent of the National Government the use of this term has been sed-

ulously avoided by responsible British statesmen. For dominion status, the White Paper substitutes the more exact phrase of a responsibly governed federation qualified by safeguards. Gandhi attended the second round-table conference on the assumption that the proposed safeguards would be "demonstrably necessary in the interests of India"—a qualification accepted by the Labour government. The White Paper, however, notes that the safeguards have been framed "in the common interests of India and the United Kingdom." Indian opinion claims that the interests of Britain have been so well safeguarded that the goal of a responsibly governed federation has been lost sight of.<sup>74</sup>

2. *The rigidity of the proposed constitutional structure.* No specific time-limits are set for the "transition period" during which the safeguards are to remain in effect. Amendments to the Constitution Act cannot be made by action of the provincial, State, or federal governments. They are reserved either to Parliamentary enactment, or else to the possibility of inserting changes in the Governor's or Governor-General's Instrument of Instructions, which must also secure the approval of Parliament. Even under these conditions, moreover, constitutional amendments would be valid in the case of the States only in so far as the Princes had previously surrendered to federal control the matters under consideration. In matters not so surrendered, the Crown would be forced to make a separate treaty with each of the federating States in order to effect an amendment to the Constitution Act. Under such circumstances, one or two important States would have the power either to delay amendments indefinitely or else to block them completely.

3. *The failure to include an adequate declaration of fundamental rights.* The White Paper fails to enumerate a full list of rights, admits few to the Constitution Act, and suggests that others may be embodied in a royal proclamation.

4. *The terms upon which the States are admitted to the federation.* In the opinion of many Indians, these terms constitute the "biggest safeguard" embodied in the constitutional proposals.<sup>75</sup> The Right Hon. V. S. Srinivasa Sastri, an Indian moderate, sums up the limitations imposed upon the federation by the Princes as follows: "To begin with, they render the dominionhood of India fundamentally defective by looking to the Crown for the maintenance of treaty rights and the exercise of paramountcy. Then they reduce the scope of federation until it is thin and anemic, and many Indian politicians think it is not worth while. They will not allow a federal agency within their territories. They regard themselves as a separate entity collectively and ask for weightage. They cannot tolerate a federal citizenship. They will not hear of fundamental rights. They will nominate their own agents to the Legislature."<sup>76</sup>

70. At the first round-table conference, the majority of the Services Sub-Committee had recommended that the recruitment of Indian civil officials should vest in the federal government. (*Indian Round Table Conference*, cited p. 405.) This decision had not been challenged at the subsequent conferences and had apparently been taken for granted, certainly by the Indian delegates. The White Paper, however, provides that the Secretary of State shall continue to recruit officers for the Indian Civil and Police Services. (*Proposals for Indian Constitutional Reform*, cited, p. 35-36; 82-84.) Five years after the inauguration of the reformed constitution, a statutory inquiry will be held on the question of the future recruitment for these services, the decision upon which shall rest with Parliament. Pending the results of this inquiry, the present ratio of British to Indian recruitment will remain unaltered—i.e., the number of Indian civil and police officers in the administration will not begin to equal the number of British civil and police officers until 1939.

72. *The Economist* (London), March 25, 1933, p. 624.

74. Sir Samuel Hoare, the Secretary of State for India, would seem to concur in this judgment. On March 27, 1933, when submitting the reform proposals to Parliament, he declared: ". . . but the fact does remain that in the true sense of the word there were no safeguards included in the Irish Treaty. Compare the Indian position with the Irish position. In India the Governor-General, the Provincial Governors and other high officials are still to be appointed by the Crown. The security Services, the executive officers of the Federal and Provincial Governments, are still to be recruited and protected by Parliament. The Army, the ultimate power in India, is to remain under the undivided control of Parliament. Those are no paper safeguards. Here are the heads of Government endowed with great powers and given, as I shall show a few minutes later in more detail, the means of carrying those powers into effect." Cf. "Speech of Sir Samuel Hoare . . ." *Indian Information Series No. 68*, cited, p. 7.

75. This judgment is shared by H. N. Brailsford, Cf. "The Biggest Safeguard," *The Servant of India*, February 9, 1933, p. 66-68.

76. *Ibid.*, p. 65. To this list should be added the practical veto power over amendments possessed by the States.